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UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Docket No. 16-5

Kristen Lee Raines, A.P.R.N.

Decision and Order

On September 16, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Kristen Lee Raines, A.P.R.N. (hereinafter, Respondent), of Little Rock, Arkansas. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration MR1972632, pursuant to which she is authorized to dispense controlled substances in schedules III through V, as a mid-level practitioner, as well as the denial of any pending applications to renew or modify her registration, on the ground that she does not have authority to dispense controlled substances in Arkansas, the State in which she holds her registration. Show Cause Order at 1.

The Show Cause Order alleged that Respondent's registration will not expire until April 30, 2018. *Id.* The Show Cause Order then alleged that the Arkansas State Board of Nursing had issued an Order, which summarily suspended Respondent's nursing and advance practice nursing licenses effective on June 19, 2015. *Id.* The Show Cause Order thus alleged that Respondent is "without authority to handle controlled substances in Arkansas," and as a consequence, her DEA registration is subject to revocation. *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).

Following service of the Show Cause Order, Respondent, through her counsel, requested a hearing on the allegations. In her hearing request, Respondent did not dispute that her registration does not expire until April 30, 2018. Resp. Hearing Req., at 1. Nor did she dispute

that the Arkansas State Board of Nursing had summarily suspended her nursing and advance practice nursing licenses. *Id.* Instead, Respondent objected to the proposed action “on the grounds that the Show Cause Order and suspension of her Arkansas nursing license and advance practice nursing license stem from unfounded and unsubstantiated allegations that she violated . . . 21 U.S.C. 841(a)(1) and (b)(1)(e) by the U.S. Attorney in” a criminal case brought against her in the Eastern District of Arkansas. *Id.* Respondent further asserted that “she did not knowingly or intentionally distribute [h]ydrocodone and [a]lprazolam . . . without an effective prescription.” *Id.* Respondent further stated that she has pled not guilty to the charges and believes that she will be acquitted. *Id.*

Thereafter, the matter was placed on the docket of the Office of Administrative Law Judges and assigned to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On October 20, 2015, the CALJ issued an order directing the Government to file evidence to support the allegation and any motion for summary disposition by October 30, 2015; the order also provided that Respondent should respond to the Government’s expected motion no later than November 13, 2015.

On October 26, 2015, the Government filed its Motion for Summary Disposition. As support for the Motion, the Government attached a copy of the decision and order of the Arkansas State Board of Nursing, which summarily suspended Respondent’s advance practice nursing license and nursing license effective June 19, 2015. Mot. for Summ. Disp., at Attachment 3, at 3 (Findings of Fact, Conclusions of Law, and Order, at 3; *In re Kristen Lee Raines Plant Raines* (Ark. Bd. of Nursing, June 19, 2015) (hereinafter, Nursing Board Order). The Government also provided a printout from the Nursing Board’s website (dated September 4,

2015) showing that both Respondent's RN and Certified Nurse Practitioner licenses were suspended. Mot. for Summ. Disp., at Attachment 4.

Respondent opposed the Government's Motion. In her opposition, Respondent asserted that she has been wrongly accused, and that the State Board's suspension of her licenses is the "result of her wrongful indictment." Resp. Reply to Govt's Mot. for Summ. Disp., at 3. She further argued that the DEA may exercise discretion in determining the appropriate sanction and that revocation of her registration "is an unjust and overly severe punishment given the circumstances, particularly that the Government [*i.e.*, the U.S. Attorney] admits it lacks the evidence to substantiate the criminal indictment against" her. *Id.* at 5. She then maintains that suspending her registration "pending the outcome [of the criminal case] is more appropriate and fair in light of the facts and circumstances of this case," and that "[i]t would be a further miscarriage of justice to revoke her [registration] on top of her criminal indictment absent any corroborating evidence thereof." *Id.* at 5-6.¹

On November 16, 2015, the CALJ granted the Government's motion. The CALJ correctly rejected Respondent's request for a stay of the proceedings, noting that a stay can rarely be justified by the existence of collateral proceedings.² Order Granting Govt's Mot. for Summ.

¹ In opposing the Government's motion, Respondent attached a copy of the indictment, as well as the Assistant United States Attorney's response and supplemental response to her motion to compel discovery. Respondent also submitted an affidavit in which she asserts that she is not guilty of the charges and that she is confident that the charges will either be dismissed or that she will be acquitted. Resp. Reply to Gov. Mot. for Summ. Disp., at Ex. C. Therein, she further asserts that she has requested a hearing on the Nursing Board's action, and that she "expect[s] that [her] nursing licensed will be restored." *Id.* at 2. She also contends that due to the Board's actions against her licenses, "the additional revocation of my [registration] would affect no change in my employment status and is unnecessary and would serve no public purpose." *Id.* She thus requested that the revocation of her registration be stayed pending the outcome of her criminal case and the Nursing Board's action. *Id.*

² In his Order, the CALJ noted that "the Agency recently held revocation proceedings in abeyance at the post-hearing adjudication level for a lengthy period pending the resolution of criminal fraud charges." Order Granting Govt's Mot. for Summ. Disp., at 4-5 (citing *Odette L. Campbell*, 80 FR 41062, 41064 (2015)). However, in *Campbell*, the respondent was indicted on 30 counts of health care fraud shortly before the hearing in the matter and also allowed her registration to expire; indeed, the respondent did not file a new application until three months after the hearing. See 80 FR at 41063. Thus, at the time the Administrator's Office held the case in abeyance, *Campbell*

Disp., at 4 (citing *Grider Drug #1 & Grider Drug #2*, 77 FR 44070, 44104 n.97 (2012)).

Finding it undisputed “that the Respondent lacks state authority to handle controlled substances in the [S]tate of Arkansas,” the CALJ concluded that “[b]ecause the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that she is not entitled to maintain her DEA registration.” Order Granting Govt’s Mot. for Summ. Disp., at 6. The CALJ thus recommended that I revoke Respondent’s registration.

Neither party filed exceptions to the CALJ’s Recommended Decision. Thereafter, the record was forwarded to me for Final Agency Action. Having reviewed the record in its entirety, I adopt the CALJ’s factual finding, his legal conclusion and recommended disposition. I make the following findings:

FINDINGS OF FACT

Respondent is the holder of DEA Certificate of Registration MR1972632, pursuant to which she is authorized to dispense controlled substances in schedules III through V, as a mid-level practitioner, at the address of 14312 Ridgewood Dr., Little Rock, Arkansas 72211. Gov. Mot. for Summ. Disp., Attachment 1, at 1. Respondent’s registration does not expire until April 30, 2018. *Id.*

Respondent is also the holder of Advanced Practice Registered Nurse License A003251 and Registered Nurse License R063743 issued by the Arkansas State Board of Nursing. Nursing Board Order, at 1. On June 19, 2015, the Board ordered the summary suspension of both of

no longer involved a revocation proceeding. Moreover, had the respondent been convicted on the health care fraud charges, she would have been subject to mandatory exclusion from federal health care programs and her application would have been subject to denial on this basis. *See Arvinder Singh*, 81 FR 8247 (2016) (denying application based, in part, on physician’s convictions for health care fraud and mandatory exclusion from federal health care programs pursuant to 42 U.S.C. 1320a-7(a)).

these licenses. *Id.* at 3. According to the results of an online search using the Arkansas Board's license verification page, Respondent's licenses remain suspended.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, "upon a finding that the registrant . . . has had [her] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Moreover, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See Alfred Tennyson Smurthwaite*, 43 FR 11873 (1978) ("State authorization to handle controlled substances is a prerequisite to the issuance and retention of a Federal controlled substances registration.") (citations omitted).

This rule derives from the text of two provisions of the CSA. First, Congress defined "the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she practices medicine. *See*,

e.g., *Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

Thus, the Agency has held that revocation is warranted even where, as here, the state board has suspended (as opposed to revoked) a practitioner's dispensing authority and that authority may be restored at some point in the future through further proceedings. *See Ramsey* 76 FR at 20036 (citations omitted); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (revoking registration of physician whose medical license had been suspended for one year, but placed on probation for three years thereafter). As the Agency has held, the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is whether the Respondent is currently authorized to handle controlled substances in the state. *James L. Hooper*, 76 FR 71371 (2011) (collecting cases), *pet. for rev. denied*, *Hooper v. Holder*, 481 Fed. Appx. 826 (4th Cir. 2012); *Blanton*, 43 FR at 27616 ("As a result of the suspension of his medical license, the [r]espondent is no longer authorized to dispense or otherwise handle controlled substances under the laws of Florida. Accordingly . . . the [r]espondent's DEA registration must be revoked[.]").

Respondent further argues that I should consider that the Nursing Board's case "is the "result of her wrongful indictment" by the United States Attorney and that the latter has admitted that he "lacks the evidence to substantiate the criminal indictment against" her. This argument is simply a collateral attack on the State Board's proceeding, whose order suspending her state authority remains in effect as of this date. The Agency has held, however, "that a registrant cannot collaterally attack the result of a state criminal or administrative proceeding in a proceeding under section 304, 21 U.S.C. 824, of the CSA." *Muzaffer Aslan*, 77 FR 37068,

37069 (2012) (other citations omitted). “Rather, Respondent’s challenge to the validity of the [Nursing Board’s] Order must be litigated in the forums provided by the State of [Arkansas], and [her] contentions regarding the validity of the [Board’s] order are not material to this Agency’s resolution of whether [she] is entitled to maintain [her] DEA registration in” Arkansas. *Id.*

Because it is undisputed that Respondent’s Arkansas Advanced Practice Nursing License remains suspended, I find that she no longer has authority under the laws of Arkansas, the State in which she is registered, to dispense controlled substances. *See* Ark. Code Ann. Section 17-87-310 (b)(1) (“An advanced practice registered nurse with a certificate of prescriptive authority may receive and prescribe drugs, medicines, or therapeutic devices appropriate to the advanced practice registered nurse’s areas of practice in accordance with rules established by the Arkansas State Board of Nursing.”). Therefore, she is not entitled to maintain her DEA registration. *See* 21 U.S.C. 802(21), 823(f), 824(a)(3). Accordingly, I will order that her registration be revoked and that any pending application to renew or modify her registration be denied.³

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MR1972632, issued to Kristen Lee Raines, A.P.R.N., be, and it hereby is, revoked. I further order that any application of Kristen Lee Raines, A.P.R.N., to renew or modify this registration be, and it hereby is, denied. This

³ While Respondent also asked that I stay the revocation of her registration pending the resolution of the criminal case and nursing board proceeding, I decline to do so. As the Agency has previously explained, “in circumstances similar to those raised by Respondent, DEA has repeatedly denied requests to stay the issuance of a final order of revocation, noting that [u]nder the Controlled Substances Act, a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which [she] practices in order to maintain [her] DEA registration.” *Gregory F. Saric*, 76 FR 16821, 16822 (2011) (internal quotations and citations omitted). Of further note, Respondent’s advanced practice nursing license was suspended more than 8 months ago, and yet her license still remains suspended. And while Respondent asserts that the Nursing Board’s suspension is the result of the wrongful indictment, she ignores that the Board’s order also relied on her having “prescribed opioids from November 13, 2014 through January 7, 2015 without prescriptive authority.” Nursing Board Order, at 2.

Order is effective immediately.⁴

Date: March 11, 2016

Chuck Rosenberg
Acting Administrator

⁴ For the same reasons which led the Nursing Board to conclude “that an emergency exists constituting a threat to the public health, safety and welfare” and to order the summary suspension of Respondent’s licenses, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

